**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE S.SIRI JAGAN**

**TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929**

**O.P.No. 13437 of 1999 - Y**

PETITIONER:
---
T.P.PATHUMMA KUTTY,
HEADMISTRESS,
A.M.L.P.SCHOOL, NADUTHODIKA,
P.O.KONDOTTY – 673 638.

BY ADV.SRI.V.K.RAVINDRAN
SMT.M.AVITA

RESPONDENTS:
---
1. THE ASSISTANT EDUCATIONAL OFFICER,
KONDOTTY – 673 638, MALAPPURAM DISTRICT.

2. THE MANAGER, A.M.L.P.SCHOOL,
NADUTHODIKA, KONDOTTY – 673 638.

3. THE DISTRICT EDUCATIONAL OFFICER,
MALAPPURAM.

4. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY, GENERAL EDUCATION DEPARTMENT,
TRIVANDRUM.

5. SRI.C.GANGADHARAN NAMBIAR (RETD.AEO),
S/O.KUNHIKANNAN NAIR, CHAMBOLI HOUSE,
VELLIYOOR.P.O., NOCHAT – 673 624,
KOZHIKODE DISTRICT.

6. SRI.K.MOHAMMED ALI,
A.EO. AND THE ENQUIRY OFFICER,
MALAPPURAM.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER
SRI.K.A.SALIL NARAYANAN
BY GOVERNMENT PLEADER SRI.T.T.MAHAMOOD.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (OP NO.13437 OF 1999)

**PETITIONER'S EXHIBITS:**

Ext.P1: Copy of judgment in OP 4442/96 dtd.28.1.98.

Ext.P2: Copy of order dated 9.3.99.

Ext.P3: Copy of letter dtd.1.8.95.

Ext.P4: Copy of letter dtd.14.8.95.

Ext.P5: Copy of letter dtd. 8/95.

Ext.P6: Copy of letter dtd.28.8.95.

Ext.P7: Copy of proceedings dtd.12.9.95.

Ext.P8: Copy of proceedings dtd.12.9.95.

Ext.P9: Copy of written statement filed dtd.5.12.95.

Ext.P10: Copy of proceedings dtd. 22.12.95.

Ext.P11: Copy of reminder dtd.24.1.96.

Ext.P12: Copy of reply dtd.5.2.96.

Ext.P13: Copy of memorandum dtd.14.2.96.

Ext.P14: Copy of notice dtd.3.6.98.

Ext.P15: Copy of letter dtd.14.6.98.

Ext.P16: Copy of notice dtd.17.7.98.

Ext.P17: Copy of letter dtd. 4.8.98.

Ext.P18: Copy of statement dtd.7.8.98.

Ext.P19: Copy of notice dtd. 5.10.98.

Ext.P20: Copy of statement dtd.12.10.98.

Ext.P21: Copy of proceedings dtd.16.10.98.

Ext.P22: Copy of letter dtd.17.10.98.

Ext.P23: Copy of letter dtd.10.4.99.

Ext.P24: Copy of reply dtd.27.4.98.

Ext.P25: Copy of letter dtd.3.5.99.

**RESPONDENTS' EXHIBITS:**

Ext.R1(a): Copy of affidavit of former A.E.O., Kondotty.

-True Copy-

P.A.to Judge.

**S. SIRI JAGAN, J.**

**----------**

**O.P. NO. 13437 OF 1999 - Y**

**----------**

**Dated this the 18th day of September, 2007**

**J U D G M E N T**

The petitioner was the Headmistress of A.M.L.P.School, Naduthodika. The Assistant Educational Officer initiated disciplinary proceedings against the petitioner. Originally, on the basis of an enquiry conducted by the fifth respondent, punishment was imposed on the petitioner. The petitioner challenged the same before this Court in O.P.No.4442 of 1996 and Ext.P1 judgment was passed wherein this Court found that that enquiry report cannot be relied upon. Therefore, the authorities were given liberty to proceed afresh after conducting a fresh enquiry into the charges levelled against the petitioner by another officer and pass appropriate orders in accordance with law. Pursuant to the same, Ext.P2 order has been passed imposing on the petitioner the punishment of reversion as Assistant Teacher of the school. There was

a further direction to recover from the petitioner an amount of Rs.53,632/- which is the pay and allowances paid to a junior teacher who was appointed in a vacancy which was sanctioned on account of the illegal act of the petitioner in showing non-existent students in the rolls which resulted in sanctioning of additional division. The period during which the petitioner was under suspension was also treated as eligible leave. Ext.P2 order of the A.E.O. is under challenge in this original petition. Several contentions are raised. However, since one of the technical contentions raised is to be upheld, I am not going into the other contentions at present. The contention of the petitioner is that the petitioner has never been supplied with a copy of the second enquiry report in spite of Ext.P23 request made for the purpose. Further, he submits that going by Ext.P2, it is clear that in the second enquiry, the enquiry officer found that the charges against the petitioner have not been proved. In spite of the same, the A.E.O. chose to disagree with the findings of the enquiry officer

and to find the petitioner guilty, based on the earlier enquiry report which was set aside by this Court. The petitioner also submits that before deciding to disagree with the findings of the enquiry officer, the A.E.O. did not grant the petitioner an opportunity of being heard which was mandatory for compliance with principles of natural justice. In respect of these contentions, the counter affidavit is silent. It is trite law that principles of natural justice require that the petitioner should be given a copy of the enquiry report and if the disciplinary authority decides to disagree with the findings of the enquiry officer, he should have put the petitioner on notice regarding the same with reasons for such disagreement and heard the petitioner. The counter affidavit does not state that this also has been done.

2. In the above circumstances, it is clear that Ext.P2 order is bad for violation of principles of natural justice on the above ground. Therefore, Ext.P2 is quashed. However, it would be open to the first respondent to proceed in accordance with law after

supplying a copy of the final report to the petitioner and hearing him as to why the findings of the enquiry officer should not be deviated from and disciplinary authority should enter his own findings on the guilt of the petitioner.

The Original Petition is disposed of as above.

**S. SIRI JAGAN,**
**Judge**

Mbs/

**S.SIRI JAGAN, J**

---

O.P.NO.13437 OF 1999

---

J U D G M E N T

DATED: 18-09-2007